

09-3425
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2009
SIGNED: 01-13-2011

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF DAVIS COUNTY,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>ORDER DENYING MOTION TO DISMISS</p> <p>Appeal No. 09-3425</p> <p>Parcel No. #####</p> <p>Tax Type: Locally Assessed Property Tax</p> <p>Tax Year: 2009</p> <p>Judge: Jensen</p>
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Taxpayer
For Respondent: RESPONDENT REP. 1, for Davis County
RESPONDENT REP. 2, for Davis County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 9, 2010 for a Hearing on a Motion to Dismiss filed by the Board of Equalization of Davis County (the "County"). The County filed its Motion to Dismiss on the basis that the above-named Petitioner (the "Taxpayer") had failed to provide evidence to support a claim for a change in value within the time provided under Utah law.

APPLICABLE LAW

To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

- a) the name and address of the property owner;
- b) the identification number, location, and description of the property;
- c) the value placed on the property by the assessor;
- d) the taxpayer's estimate of the fair market value of the property; and
- e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

Utah Admin. Rule R861-1A-9(C)(8).

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If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief. Utah Admin. Rule R861-1A-9(C)(9).

If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief. Utah Admin. Rule R861-1A-9(C)(10).

If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case. Utah Admin. Rule R861-1A-9(C)(11).

DISCUSSION

On July 24, 2009, the County mailed its notice of property valuation to the Taxpayer for the subject property, parcel no. #####. That notice included language giving the Taxpayer until September 15, 2009 to file an appeal of the valuation. On September 14, 2009, the Taxpayer timely filed a request to review market value. With the request, the Taxpayer provided two attachments. The first was a letter in which the Taxpayer described percentage increases in the County's valuation of the subject property from year to year and stating the County's valuation increases have exceeded market changes. The Taxpayer's second attachment was a copy of what appeared to be a newspaper article discussing the need for taxpayers to be proactive in reviewing property tax notices. On September 15, 2009, the County sent a notice to the Taxpayer. That notice indicated that the request to review market value did "not contain sufficient information to warrant an adjustment in property value." The County's notice provided the Taxpayer 20 calendar days to provide "[s]ufficient documentation that supports your basis for appeal."

On October 13, 2010, the Taxpayer mailed a letter to the County indicating that the Taxpayer was "unable to find any comparable sales for the past year. Only one lot was sold during this time. I still wish to appeal the 100% increase in my property valuation." The County indicates that it received the Taxpayer's letter on October 13, 2009 but that it would not have matched that letter to the Taxpayer's file that day. On October 13, 2009, the County dismissed the Taxpayer's appeal and sent notice of dismissal to the Taxpayer. The County maintains that its dismissal was proper because the Taxpayer did not timely respond with evidence as required under Utah law. The County argues that even if the Taxpayer's letter had been timely, a letter saying there is no evidence is not a proper submission of evidence or documents required to support a claim for relief. The Taxpayer's position is that the dismissal was improper because the County had notice that there were no

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comparable sales before the County dismissed the case.

Utah law provides that a valid appeal to a county board of equalization must include “a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.” Utah Admin. Rule R861-1A-9(C)(8). If a taxpayer files an appeal without a signed statement, a county board of equalization is to provide ten days for the Taxpayer to provide the signed statement. Utah Admin. Rule R861-1A-9(C)(9). If a taxpayer provides a signed statement but no evidence or documentation, a county board of equalization is to give written notice and provide “at least 20 calendar days to supply the evidence or documentation.” Utah Admin. Rule R861-1A-9(C)(10). If a taxpayer does not provide the evidence or documentation, the county board of equalization has the right to “dismiss the matter for lack of evidence to support a claim for relief.” Utah Admin. Rule R861-1A-9(C)(10). If a taxpayer provides the evidence or documentation, Utah law requires that the county board of equalization “render a decision on the merits of the case.” Utah Admin. Rule R861-1A-9(C)(11).

Applying Utah law to the facts of this case, the parties agree that the Taxpayer timely filed an appeal with the County that met requirements of subsections a), b), c), and d) of Utah Admin. Rule R861-1A-9(C)(8). As to subsection e), the County agreed that the Taxpayer submitted a signed statement. The only area of dispute is whether the Taxpayer provided “evidence or documentation” as required by the second half of subsection e) of Utah Admin. Rule R861-1A-9(C)(8).

Utah Admin. Rule R861-1A-9(C)(8)(e) does not indicate the quality of what a taxpayer must submit to receive a hearing before the board of equalization. A taxpayer does not need to prove that he or she has evidence or documentation that would guarantee a winning case – it is sufficient that the taxpayer submit evidence, documentation, or both. A hearing is the place to determine if a taxpayer’s evidence is sufficient to cause the board of equalization to grant relief to the taxpayer. In this case, the Taxpayer provided evidence in the form of testimony in a letter as well as documentation in the form of a copy of an article. Because the Taxpayer satisfied the minimum requirements of Utah Admin. Rule R861-1A-9(C)(8)(e), there is no basis to grant the County’s motion to dismiss.

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ORDER

The Commission denies the County's Motion to Dismiss and remands the matter to the Davis County Board of Equalization for a hearing as provided under Utah law. It is so ordered.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice and Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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